

**AGREEMENT BETWEEN THE CITY OF BLOOMINGTON
AND JAMES BRENNER**

THIS AGREEMENT for professional and construction services is made this 24th day of February, 2015 between the City of Bloomington, a Minnesota municipal corporation located at 1800 West Old Shakopee Road, Bloomington, Minnesota 55431 (hereinafter referred to as the "City"), and James Brenner, located at 1720 Madison Street NE, Minneapolis, MN 55413 (hereinafter referred to as the "Contractor").

WITNESSETH

WHEREAS, the City desires to enhance the South Loop District by incorporating sculpture and art; and

WHEREAS, the Contractor submitted a proposal for a Sculpture (the "Sculpture") to be located in the center of the roundabout at Lindau Lane and 28th Avenue; and

WHEREAS, the Contractor represents that it has the professional expertise and capabilities to construct and install the Sculpture and design the landscape concept proposed and described in Exhibit A (the "Project"); and

WHEREAS, the City desires to have the Contractor design, fabricate and install the Sculpture, as well as design its surrounding landscape, collectively referred to as "Project"; and

NOW, THEREFORE, in consideration of the following terms and conditions and mutual promises expressed herein, the parties agree as follows.

I. TERM OF AGREEMENT

The term of this Agreement shall be from February 24, 2015, to December 31, 2015, subject to termination as provided in Article V.

II. SCOPE OF SERVICE

A. General

1. The Contractor agrees to complete the Project, as proposed, and perform all other terms and conditions according to the Proposal and the Specifications incorporated by reference herein as Exhibits A and B.
2. The Contractor shall provide monthly fabrication progress updates to the City, or more frequently as requested.

B. Design - The Contractor shall:

1. Use information obtained through dialogue with City staff to develop and refine a final design for the Project as shown in Exhibits A and B.
2. Prepare a final Project design that complies with all codes, structural and functional requirements, is constructed of durable materials, and requires minimum repair or maintenance;
3. Present the final Project design for approval by the City.
4. Design the base/pedestal and footings for the Sculpture utilizing a licensed structural engineer who shall provide signed design documents and review its installation.
5. The Contractor will provide a copy of the engineer's structural analysis to the City.
6. Prepare landscape design, including grading and plantings for the approximately 7,000 square foot area inside the roundabout.
7. Obtain required permits for the Sculpture, including electrical and building permits.
8. Make recommendations to City for directional street signs.
9. Provide to the City information related to the electrical load and the soil bearing capacity needed for the sculpture along with any other design requirements.

C. Fabrication - The Contractor shall:

1. Fabricate the Sculpture, footings, podium/base or pedestal and deliver the Sculpture to the site for installation.

D. Installation - The Contractor shall:

1. Provide information and documents required to obtain approval and permits from the City;
2. Connect the Sculpture's internal lights and controls and provide ancillary wiring (with electric source to be provided by City).
3. Install and construct the sculpture, podium/base or pedestal.
4. Coordinate installation with the City and City contractor who will perform grading and install the landscaping.

III. COMPENSATION AND PAYMENT SCHEDULE

Total compensation under this Agreement shall not exceed ONE HUNDRED NINETY THOUSAND THREE HUNDRED FORTY DOLLARS (\$190,340.00), inclusive of Contractor travel, materials and supply expenses as defined in Exhibit B. Contractor shall be paid on the dates and in the amounts specified below:

- A. 50% upon acceptance and execution of this contract;
- B. 25% upon completion of Sculpture fabrication and delivery to the site;
- C. 25% Final payment upon installation and final acceptance by the City.

Payments to Contractor will be made within thirty (30) days of receipt of invoices from

Contractor.

IV. APPROVALS AND ACCEPTANCE

Approval to proceed with the Project as shown in renderings must be approved in writing by the City. Any deviations or changes from the final design as approved must be requested by Contractor and approved in writing by the City.

V. MAINTENANCE, WARRANTY AND REPAIRS

Contractor shall provide the City with written instructions on how to maintain the sculpture. Contractor is responsible for the cost and execution of repairs related to any inherent flaws with the sculpture or its lighting for one year after installation.

VI. RISK OF LOSS

Contractor will bear the risk of loss or damage to the sculpture until Final Approval as defined in Section 7 below has been given by the City. Contractor will take such measures as are necessary to protect the sculpture and surrounding landscape from loss or damage until Final Approval.

VII. FINAL APPROVAL AND DOCUMENTATION

Upon completion and installation of the Project, the City will inspect the sculpture and surrounding landscape and provide written approval (the "Final Approval") to Contractor when the City deems the Project to be complete and consistent with the final design approved pursuant to Section 4 above. Prior to the Final payment described in Section 3, Contractor will provide the City with the following documentation:

- A. List of all materials used to fabricate the sculpture (with specific product and manufacturer information).
- B. One copy of the final design drawing
- C. Written maintenance instructions.

VIII. CREATION AND USE OF IMAGES

Contractor and the City may photograph, videotape, and otherwise record images of the sculpture throughout fabrication and installation process and after installation. Contractor may use the resulting images for any purpose at Contractor's discretion. The City may use the resulting images to promote creative placemaking in the South Loop and other creative placemaking initiatives, provided it credits Contractor in each use. City acknowledges that the Contractor intends to work with Minnesota Public Television on a program about the process of creating and installing the sculpture.

IX. ACKNOWLEDGMENT OF CITY

Contractor agrees to include the following acknowledgment in any printed, video or online description or image of the Project: “Commissioned as part of *Creative Placemaking in the South Loop*, an initiative of the City of Bloomington and Artistry.

X. CONFIDENTIALITY

Contractor will keep all non-public or proprietary information regarding the City and its partners in the Project confidential. Contractor will not, except as required by law, disclose such information in any manner, in whole or in part. This Section 10 will survive termination or expiration of this Agreement.

XI. GENERAL PROVISIONS

- A. The Contractor agrees that the City will own and have the right to use, reproduce and apply as it desires, any data, reports, analyses and materials which are collected or developed by the Contractor or anyone acting on behalf of the Contractor as a result of this Agreement.
- B. The Contractor shall defend, indemnify and hold harmless the City, its officials, employees and agents, from any and all claims, causes of action, lawsuits, damages, losses, or expenses, including attorney fees, arising out of or resulting from the Contractor's (including its officials, agents or employees) performance of the duties required under this Agreement, provided that any such claim, damages, loss or expense is attributable to bodily injury, sickness, diseases or death or to injury to or destruction of property including the loss of use resulting therefrom and is caused in whole or in part by any negligent act or omission or willful misconduct of Contractor.
- C. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting the Contractor's staff as the agents, representatives or employees of the City for any purpose in any manner whatsoever. The Contractor and its staff are to be and shall remain an independent contractor with respect to all services performed under this Agreement. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and all personnel of the Contractor or other persons, while engaged in the performance of any work or services required by the Contractor under this Agreement, shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of said personnel or other persons while so engaged, and any and all claims whatsoever on behalf of any such person or personnel arising out of

employment or alleged employment including, without limitation, claims of discrimination against the Contractor, its officials, agents, contractors or employees shall in no way be the responsibility of the City; and the Contractor shall defend, indemnify and hold the City, its officers, agents and employees harmless from any and all such claims regardless of any determination of any pertinent tribunal, agency, board, commission or court. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits of any kind whatsoever from the City, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Compensation, disability, severance pay and PERA.

- D. The parties agree to comply with the Minnesota State Human Rights Act, Minnesota Statutes, Section 363, as amended.
- E. To the extent allowed by law, Contractor agrees to maintain the following insurance coverages, in an amount equal to, or greater than, the minimum limits described below. Contractor will provide the City with a certificate of insurance evidencing such coverages prior to performing any duties included under the terms and conditions of this Agreement. Contractor also agrees to keep a valid certificate of insurance on file, referencing these limits, throughout the entire term of this agreement.
 - 1. Commercial General Liability Insurance in the amount of at least \$1,500,000 per occurrence for bodily injury or death arising out of each occurrence, as well as \$1,500,000 per occurrence for property damage.
 - 2. Business Automobile Insurance in the amount of \$1,500,000 per occurrence for bodily injuries or death arising out of each occurrence, as well as \$1,500,000 per occurrence for property damage.
 - 3. To meet the above requirements, the Consultant may use a combination of Commercial General Liability and Umbrella coverage, as long as the City approves such use and it is evidenced on the Certificate of Insurance naming the City as an additional insured on both policies. The Umbrella needs to be a “following form” coverage and provide a thirty (30) day notice of cancellation.
 - 4. Workers' Compensation Insurance as required by Minnesota Statutes, Section 176.181, subd. 2.
 - 5. Professional Liability Insurance for the structural engineer in the amount of \$1,000,000 per occurrence.

6. The Contractor agrees to name the City as an additional insured on its Commercial General Liability and Business Automobile Insurance policies, and to provide an endorsement of such status. In addition, the Contractor agrees to notify the City thirty (30) days prior to cancellation or a change in any of the aforementioned insurance policies. All insurance must be provided at the Contractor's expense and at no additional cost to the City.

- F. Entire Agreement. This Agreement represents the entire Agreement between the Contractor and the City and supersedes and cancels any and all prior agreements or proposals, written or oral, between the parties relating to the subject matter hereof; and amendments, addenda, alterations, or modifications to the terms and conditions of this Agreement shall be in writing and signed by both parties.
- G. Americans With Disability Act. The Contractor agrees to comply with the Americans With Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973 and not discriminate on the basis of disability in the admission or access to, or treatment of employment in its services, programs, or activities. The Contractor agrees to hold harmless and indemnify the City from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of ADA and/or Section 504 caused by the Contractor. Upon request accommodation will be provided to allow individuals with disabilities to participate in all services, programs and activities. The City has designated coordinators to facilitate compliance with the Americans with Disabilities Act of 1990, as required by Section 35.107 of the U.S. Department of Justice regulations, and to coordinate compliance with Section 504 of the Rehabilitation Act of 1973, as mandated by Section 8.53 of the U.S. Department of Housing and Urban Development regulations.
- H. Minnesota Government Data Practices Act. The Contractor will comply with all applicable provisions of the Minnesota Government Data Practices Act, Chapter 13 of the Minnesota Statutes, as amended.
- I. Applicable Laws. This Agreement shall be interpreted using the laws of the State of Minnesota. The Contractor agrees to comply with all applicable local, state and federal laws, rules, regulations and ordinances in the performance of the duties of this Agreement.
- J. Assignment. This Agreement shall not be assignable except with the written consent of the City.
- K. Examination of Documents. The books, records, documents, and accounting procedures of the Contractor, relevant to this Agreement, are subject to examination by the City, and either the legislative or state auditor as appropriate, pursuant to Minnesota Statutes, Section 16C.05, Subdivision 5.
- L. Mediation. Both parties agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation. The mediation shall be conducted through the Conflict Resolution Center,

2101 Hennepin Avenue, Suite 100, Minneapolis, MN 55405. The parties hereto shall decide whether mediation shall be binding or non-binding. If the parties cannot reach agreement, mediation shall be non-binding. In the event mediation is unsuccessful, either party may exercise its legal or equitable remedies and may commence such action prior to the expiration of the applicable statute of limitations.

- M. Payment of Subcontractors. The Contractor agrees that it must pay any subcontractor within ten (10) days of the prime contractor's receipt of payment from the municipality for undisputed services provided by the subcontractor. The Contractor agrees that it must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorneys fees, incurred in bringing the action.
- N. Adherence to City Policies. The Contractor agrees, as a condition of being awarded this Agreement, to require each of its agents, officers and employees to abide by the City of Bloomington's policies prohibiting sexual harassment, firearms and smoking, as well as all other reasonable work rules, safety rules or policies regulating the conduct of persons on City property at all times while performing duties pursuant to this Agreement. The Contractor agrees and understands that a violation of any of these policies or rules constitutes a breach of the Contract and sufficient grounds for immediate termination of the Agreement by the City.
- O. Severability. If any provision or term of this Agreement for any reason is declared invalid, illegal or unenforceable such decision shall not affect the validity of any remaining terms or conditions in this Agreement.
- P. Signatory. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. In the event the Contractor did not authorize the Signatory to sign on its behalf, the Signatory agrees to assume responsibility for the duties and liability of the Contractor, as set forth herein, personally. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

XII. TERMINATION

- A. The City reserves the right to cancel this Agreement at any time in event of default or violation by the Contractor of any provision of this Agreement. The City may take whatever action at law or in equity that may appear necessary or desirable to collect

damages arising from a default or violation or to enforce performance of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF BLOOMINGTON

DATED:_____ BY:_____ ☐
Its Mayor

DATED:_____ BY:_____
Its City Manager

Reviewed and approved by the City Attorney.

City Attorney

JAMES BRENNER

DATED:_____ BY:_____
Its:_____

EXHIBIT A

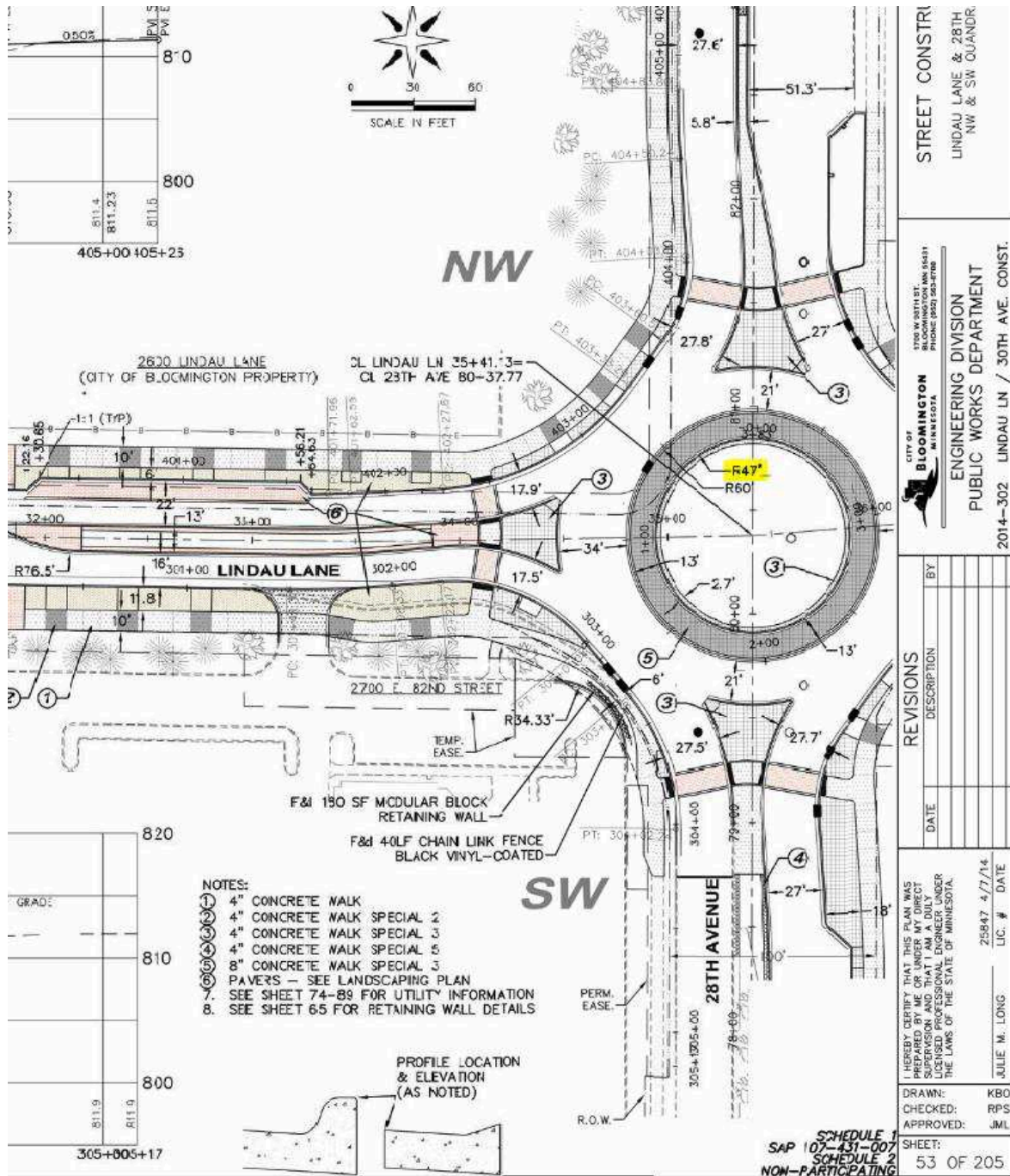


Exhibit B

JAMESBRENNER s c u l p t u r e
1720 Madison Street NE 12
Minneapolis, MN 55413
312-303-1031
jim@jamesbrenner.com

Bloomington Roundabout Sculpture Project

BUDGET

Design Fee	\$ 8,000
Sculpture Materials:	
Cor-Ten Steel	\$26,710
Green Jade Float Glass	\$22,560
Sculpture Labor:	
Steel Fabrication	\$31,485
Glass Fabrication	\$59,450
Professional Services:	
Engineering	\$ 4,400
Concrete	\$16,520
Electrical	\$11,840
Installation:	
Crane (2 days)	\$ 4,500
Labor (3 days)	\$ 4,875
TOTAL	\$190,340

Budget amounts include Contractor travel, materials and supply expenses.